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Tuesday, May 22, 2007

Debunking civics class mythologies

There are a number of modern mythologies that severely disturb our ability to think clearly about law and politics. They encourage lawlessness by sowing confusion about the law. You may have learned them from high school civics class, or from newspapers, or from your friends. Indeed, almost all of us take them for granted, even though they are as fuzzy and false as the tooth fairy. These statements and phrases are legally meaningless and politically muddle-headed, but people often utter them as if they were as obvious as the sun in the sky.

(1) "...the government..." -- But there is no such thing as *the* government outside of a totalitarian government like Stalinist Russia. (Actually, even Stalinist Russia was divided into Republics). In the U.S. we have a federal government, state governments, counties, cities, transit districts, and so on. Mall security can arrest shoplifters and in many states the resident of a house can legally shoot burglars. None of these have arbitrary power, although people often think or act as if states or the federal government or the President himself do or should. This phraseology is related to the totalitarian doctrine of internal sovereignty. Besides federalism and separation of powers, another historical way to avoid this totalitarianism was jurisdiction as property. A related myth I hear comes from my fellow American civilians whose commutes are too long. They have drunk too deeply of the talk radio kool-aid and call President Bush "our Commander-in-Chief." If you check the U.S. Constitution, you will see that President Bush is Commander-in-Chief of the U.S. armed forces only. This phrase, with "the government", may reflect overuse of a biological instinct to think we live in one tribe and follow a single tribal alpha male.

(2) "We have a social contract." -- But the principle behind much law of contract formation, such as the Statute of Frauds, is that any contracts involving momentous things, like real property, should be carefully considered and consented to by each person bound -- the rationale behind requiring that the important parts of real estate contracts be initialed and the entirety signed. Politics is pretty important, so -- where did I sign? Where did I initial my approval for the income tax, zoning laws, and our military adventures? There is also the only slightly more plausible fiction of a claiming that jurisdiction is a voluntary relationship as a matter of constructive contract or restitution which I debunk here. Lysander Spooner also long ago debunked social contract theory. Governments do indeed have the legal authority to tax, to make and enforce laws, and so on, but this authority is certainly not derived from any sort of contract with those they rule. Furthermore, citizens generally have no legal rights whatsoever to be protected by any government from any sort of violence (except, sometimes, violence by that government itself), even though that has been said to be the main purpose of government. To the extent government might be justified in common law terms, property and corporate law are much more realistic starting points. (Note that the full form of this phrase usually involves the abominable combination of two mythologies: "We have a social contract with the government.")

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Nick Szabo

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(3) "It's the will of the people" -- But who are "the people"? By what magical group mind and group mouth do they express their "will"? This is another phrase that is legally meaningless and politically muddle-headed. There are a number of related nonsense-phrases, e.g. "the consent of the governed", used as a justification for enforcing oppressive laws on the many persons who did not consent.

So why follow the law, besides the obvious utilitarian considerations like not wanting to be punished? We should follow the law for the same reasons our ribosomes follow our genetic code. Both law and the genetic code are inherited information that we need first to survive, then to thrive. They are both often highly evolved, with highly improbable functions that are often difficult or impossible to understand. Laws are blueprints providing the basic structure for social interactions, just as genes code for the interactions between cells and even some of the basic interactions between individuals. To the extent political nonsense-phrases interfere with a clear understanding of the law and law enforcement, they destroy what many millenia of cultural evolution has built.

(This post was proximately inspired by discussions I have been having with one Mencius Moldbug here, here, and here).

Posted by Nick Szabo at 1:54 PM

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